



**Billing Code: 7565-01**

**DEPARTMENT OF THE INTERIOR**

**National Indian Gaming Commission**

**25 CFR Part 571**

**RIN: 3141-AA49**

**Issuance of Investigation Completion Letters**

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Final rule.

**SUMMARY:** This action amends our regulations to provide for the issuance of an investigation completion letter if the Agency will not recommend the commencement of an enforcement proceeding against a respondent.

**DATES:** Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** John Hay, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, D.C. 20005.  
Telephone: 202-632-7009.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (“Commission”) and sets out a comprehensive framework for the regulation of gaming on Indian lands. The

purposes of IGRA include providing a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

## **II. Previous Rulemaking Activity**

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule setting out a consultation schedule and process for review. 76 FR 18457. The Commission's regulatory review process established a tribal consultation schedule with a description of the regulation groups to be covered at each consultation. This part 571 was included in the regulatory review.

As part of its review of part 571, the Commission consulted with tribes and tribal leaders or their representatives in every region of the country. Further, on June

28, 2011, the Commission issued a preliminary draft of amendments to Part 571 and requested public comment.

The Notice of Regulatory Review Schedule announced the Commission's intent to review whether part 571 needed revision to clarify the NIGC's authority to access records located off-site, including at sites maintained and owned by third-parties. Comments received by the Commission in response to the Notice of Inquiry expressed the view that NIGC already possessed that authority, that it was clear and that it did not need to be further clarified through regulation. The Commission agreed that further clarification was unnecessary and did not propose changes to that section.

Throughout the review process of this part, the Commission received comments that the regulations should include a process for notifying a tribe that an investigation has been concluded. Tribal representatives explained that in some instances they were never notified of the results of investigations opened by the NIGC years ago. The discussion draft attempted to formalize NIGC's informal process of advising a tribe, through NIGC's authorized representative, after an investigation was terminated. All comments received on the discussion draft were supportive of the concept. However, several comments indicated that such a letter should be mandatory and not discretionary. The Commission believes it is important to provide the Chair with the discretion to make those determinations on a case-by-case basis. The final rule retains that discretion.

After considering the comments received from the public and through tribal consultation, the Commission published a Notice of Proposed Rulemaking on October 12, 2011. The comment period closed on December 12, 2011.

After considering the comments received from the public and through tribal consultation, the Commission published a Notice of Proposed Rulemaking on October 12, 2011. The comment period closed on December 12, 2011.

### **III. Review of Public Comments**

In response to our Notice of Proposed Rulemaking, published October 11, 2011, 76 FR 63237, we received the following comments.

Comment: Numerous comments support the issuance of an investigation closure letter. Many comments stated the importance of providing some indication when an investigation has been completed and that an enforcement action is no longer active.

Response: The Commission agrees that in some circumstances such a letter may be appropriate.

Comment: One commenter suggested that the issuance of investigation closure letters be mandatory instead of voluntary.

Response: The Commission believes that the Chair should retain discretion in conducting investigations and when staff may indicate that a matter is closed. Therefore, the Commission believes these letters should not be mandatory.

### **IV. Regulatory Matters**

#### ***Regulatory Flexibility Act***

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

### ***Small Business Regulatory Enforcement Fairness Act***

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

### ***Unfunded Mandate Reform Act***

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. § 658(1).

### ***Takings***

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

### ***Civil Justice Reform***

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

### ***National Environmental Policy Act***

The Commission has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.

***Paperwork Reduction Act***

This rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., and is therefore not subject to review by the Office of Management and Budget.

**List of Subjects in 25 CFR Part 571**

Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Commission amends 25 CFR part 571 as follows:

**Part 571 - Monitoring and Investigations**

1. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Add new § 571.4 to subpart A to read as follows:

**§ 571.4 Investigation completion letter.**

In instances where NIGC has concluded its investigation of a particular matter and will not recommend the commencement of an enforcement proceeding against a respondent at that time, the Commission's authorized representative, in his or her discretion, may advise the party by letter that the investigation has been completed.

An investigation completion letter does not constitute a finding that no violation of IGRA, NIGC regulations, or a tribe's approved gaming ordinance occurred. Further, an investigation completion letter does not preclude the reopening of an investigation or the initiation of an enforcement action by the Chair.

DATED: July 31, 2012, Washington, DC.

---

Tracie L. Stevens,  
Chairwoman

---

Steffani A. Cochran,  
Vice-Chairwoman

---

Daniel J. Little,  
Associate Commissioner

[FR Doc. 2012-19166 Filed 08/08/2012 at 8:45 am; Publication Date: 08/09/2012]